



DEPARTMENT OF THE AIR FORCE  
AIR FORCE LEGAL SERVICES AGENCY (AFLSA)

1 July 2002

MEMORANDUM FOR ALL STAFF JUDGE ADVOCATES

FROM: AFLSA/JAJM  
112 Luke Avenue, Room 343  
Bolling AFB DC 20332-8000

SUBJECT: Articles 57(a) and 58b, Uniform Code of Military Justice

To assist your offices when dealing with Articles 57(a) and 58b of the UCMJ, I have attached a comprehensive background paper setting forth the law and procedures that should be followed. This paper supercedes a previous background paper released by our office on 26 Feb 02. It addresses the distinctions between Articles 57(a) and 58b, including the deferral and waiver provisions under the respective Articles and the significant changes resulting from the court's decision in *United States v. Emminizer*, 56 M.J. 441 (2002). If you have any questions concerning these issues, please contact our Policy and Precedent Branch or Appellate Records Branch, both at DSN 297-1539.

A handwritten signature in black ink, appearing to read "C. A. Smith", is positioned above the typed name.

CRAIG A. SMITH, Col, USAF  
Chief, Military Justice Division  
Air Force Legal Services Agency

Attachment:  
a/s

**BACKGROUND PAPER**  
**ON**  
**ARTICLES 57(a) AND 58b, UCMJ**

1. This background paper provides comprehensive guidance on implementing the forfeiture provisions under Articles 57(a) and 58b, UCMJ. It addresses the distinctions between Articles 57(a) and 58b and their provisions for deferring and waiving forfeitures, including how to determine dependency under Article 58b. This paper also describes appropriate procedures for deferring and waiving forfeitures and sound practices to avoid post-trial processing issues in cases involving requests for deferral or waiver of forfeitures. Finally, it addresses the application of these Articles to offenses committed prior to 1 April 1996.

2. **Distinctions between Articles 57(a) and 58b, UCMJ:** Articles 57(a) and 58b are separate and distinct statutory provisions. They serve different purposes.

a. Article 57(a) mandates the effective date of any forfeiture of pay and allowances or reduction in grade that is included in the sentence of a court-martial. It provides that adjudged forfeitures and an adjudged reduction in grade will take effect upon the convening authority's action or 14 days after the sentence is adjudged, whichever occurs first. There is no additional requirement under Article 57(a) for the sentence to include confinement or a punitive discharge. Therefore, adjudged forfeitures and reductions should take effect on the date provided for in Article 57(a) even if there is no confinement or punitive discharge in the case.

b. Article 58b, on the other hand, requires forfeiture of pay and allowances due a member during qualified periods of confinement or parole. The mandatory forfeitures (also known as required or automatic forfeitures) under this provision will only take effect if three conditions exist:

- (1) the adjudged sentence includes confinement for more than six months, or confinement for any period *and* a dishonorable or bad conduct discharge or dismissal;
- (2) the accused is in confinement or on parole; and
- (3) the accused is otherwise entitled to pay and allowances that are subject to mandatory forfeitures.

Like adjudged forfeitures, mandatory forfeitures take effect on the date of action or 14 days after the sentence is adjudged, whichever occurs first. The required pay and allowances forfeited in a general court-martial is all pay and allowances due the member, and the pay and allowances forfeited in a special court-martial is two-thirds of all pay due the member.

3. **Deferral and Waiver Provisions under Articles 57(a) and 58b:** Special rules exist under Articles 57(a) and 58b by which a convening authority can permit the accused and/or the accused's dependents to receive forfeitures that would otherwise have been lost under the provisions described above.

a. Article 57(a)(2) permits the convening authority to defer adjudged forfeitures and an adjudged reduction in grade from taking effect until action. Article 58b(a)(1) expressly permits mandatory forfeitures to be deferred in the same manner as provided in Article 57(a). If a reduction in grade is deferred in conjunction with a deferral of forfeitures, the pay will often be considerably higher than the pay that would be available at the reduced grade (i.e., E-1). To have adjudged and, if applicable, mandatory forfeitures deferred, the accused must submit a written request. The accused pay will not stop if the convening authority approves a deferment of both adjudged and mandatory forfeitures, or approves a deferment of only adjudged forfeitures when there are no mandatory forfeitures. The convening authority may also rescind a deferment at any time. The accused's dependents do not receive deferred forfeitures, but see the waiver provision of Article 58b, discussed below.

b. Article 58b contains provisions permitting a waiver of mandatory forfeitures. A waiver of mandatory forfeitures is separate and distinct from a deferral and different rules apply:

- (1) Mandatory forfeitures can only be waived in cases where an accused has dependents and the waived forfeitures must be paid to the dependents (see paragraph 6 below for dependency determinations).
- (2) Mandatory forfeitures can only be waived by the convening authority for a period not exceeding six months or the period of confinement if less than six months.
- (3) Waived forfeitures cannot be applied beyond the member's expiration of term of service (ETS) since there is no pay entitlement.
- (4) The accused does not have to apply for a waiver of mandatory forfeitures; the convening authority may waive mandatory forfeitures on his or her own initiative.
- (5) The convening authority can waive mandatory forfeitures either before taking action or when taking action on the case. The waiver can be retroactive, designated to begin on a date 14 days after the sentence is adjudged.
- (6) Adjudged forfeitures take priority over (or "trump") mandatory forfeitures. Therefore, the convening authority must defer, suspend, mitigate or disapprove all or part of adjudged forfeitures in order to waive a corresponding amount of mandatory forfeitures. Put another way, mandatory forfeitures can be waived for the benefit of the accused's dependents only to the extent adjudged forfeitures are not in effect. See *United States v. Emminizer*, 56 M.J. 441 (2002) (overruling *United States v. Owen*, 50 M.J. 629 (A.F. Ct. Crim. App. 1998)).

c. A convening authority can defer mandatory forfeitures (and any adjudged forfeitures) until action and then waive mandatory forfeitures for a period not to exceed 6 months. A combination of deferral and waiver can maximize the pay and allowances going to the accused and his or her family, if this is the convening authority's desire in the case.

4. ***U.S. v. Emminizer***: Before advising a convening authority on what action to take, a thorough understanding of *U.S. v. Emminizer* is required.

a. A general court-martial sentenced SPC Emminizer to a BCD, confinement for 18 months, forfeiture of all pay and allowances and reduction to E-1. In clemency, SPC Emminizer requested a waiver of forfeitures for the benefit of his young son. The staff judge advocate advised the convening authority that in order to grant the waiver, he would have to disapprove the adjudged forfeitures. The convening authority denied the waiver request. The Court found

this recommendation correct but incomplete. “First, he also should have stated that if the convening authority modified or suspended the adjudged forfeitures, he could then waive the resultant mandatory forfeitures.” 56 M.J. at 445. The Court surmised that the convening authority might have denied the request because he may not have wanted to disapprove the entire eighteen-month period of adjudged forfeitures. “The SJA should have advised the convening authority that compensation for dependents under the waiver authority may be paid only for a transitional six-month period, and that the convening authority could grant appellant’s request by suspending adjudged forfeitures for six months, and then waiving the resulting mandatory forfeitures for the six-month period.” *Id.*

b. The first lesson of *Emminizer* is that if the SJA prepares a legal review of a waiver request, it must correctly state the convening authority’s options. Before action, a convening authority may waive mandatory forfeitures to the extent adjudged forfeitures are deferred or are otherwise not in effect. At action, not only may the convening authority disapprove adjudged forfeitures in order to waive a corresponding amount of mandatory forfeitures, the convening authority may mitigate or suspend them.

c. A suspension of a sentence is a probationary period during which time the suspended part of an approved sentence is not executed. Upon successful completion of the probationary period, the suspended part of the sentence is remitted. According to *Emminizer*, to make mandatory forfeitures available to be waived for the accused’s dependents, part of a sentence to adjudged forfeitures can be suspended. The suspension would need to be no longer than six months, as that is the maximum period mandatory forfeitures may be waived. At the end of the suspension period, the suspended forfeitures would be remitted, unless they are sooner vacated. (If the accused violates a condition of the suspension, a hearing is required to vacate a suspended sentence. See RCM 1109.) Each month after the suspension period, the unsuspended adjudged forfeitures, approved and executed in the convening authority’s action, would begin to be collected.

d. The simplest way to make adjudged forfeitures not take effect, so that the maximum amount of mandatory forfeitures can be waived, is to disapprove adjudged forfeitures at action. Before action, the only way for the convening authority to stop adjudged forfeitures from taking effect is to defer them. Remember, however, the convening authority cannot approve a deferment without a request from the accused.

**5. Mechanics of Deferring and Waiving Forfeitures:** Attachment 1 provides a concise table explaining the relationship between adjudged and mandatory forfeitures from the date sentence is adjudged until the end of the forfeiture period. Attachment 2 provides examples of the interplay between adjudged and mandatory forfeitures. To assist in drafting the convening authority’s action on the sentence, see Attachment 3. The following guidance is provided to further assist you in the implementation of Articles 57(a) and 58b.

a. If an accused requests a deferral of a reduction in grade and/or a forfeiture of pay and allowances until action is taken, the convening authority may approve the request, in full or in part, or may disapprove the request. The accused’s deferral request should specify whether a request for deferred forfeitures is for adjudged or mandatory forfeitures, or both. If it is unclear, the convening authority may treat it as a request for deferral of both. The convening authority’s action on the request should be reflected in a signed and dated document. The terms of approved

deferrals must also be reported in a 14-day priority message in accordance with Figure 9.2 in AFI 51-201 and must be reported in the action the convening authority ultimately takes on the case. A deferral of forfeitures may be for adjudged forfeitures, mandatory forfeitures, or both, and for all pay and allowances to which the accused is entitled or a lesser sum. Remember, mandatory forfeitures apply only up to the jurisdictional limit of the court-martial: forfeiture of all pay and allowances for a general court-martial, and forfeiture of two-thirds pay per month for one year for a special court-martial.

b. In cases where mandatory forfeitures are being waived, whether before or in the action, the approved waiver should express the amount being approved in dollar amounts per month. The exception to this is when the waiver is for total pay and allowances in a general court-martial or two-thirds pay in a special court-martial. Approved requests must also identify the dependents that will receive the waived forfeitures. Remember that mandatory forfeitures can only be waived to eligible dependents of an accused. If payments are made to an ex-spouse or other person on behalf of minor dependents, confirmation that the designated payee is the appointed guardian or custodian of the minor dependents will be required. When mandatory forfeitures are waived before action, the convening authority should reflect this action in a signed and dated document. Such a waiver of forfeitures should also be reported in the 14-day priority message in accordance with AFI 51-201 and in the action the convening authority ultimately takes on the case.

c. When addressing waiver of mandatory forfeitures, you can contact the local accounting and finance office to determine the accused's entitlements and the actual amount of pay and allowances the accused and/or the accused's dependents are entitled to receive. A number of factors can impact these entitlements. For example, in most cases, the accused will lose BAS upon entering confinement. Therefore, the convening authority cannot give the accused's family a sum that would require payment of part of the BAS. You also need to be aware of the fact that federal and state taxes will be withheld from any payments of deferred or waived forfeitures. Therefore, if the convening authority wants the accused's family to receive a certain amount of money, the amount of taxes will have to be factored into the decision. In addition, a reduction in grade, unless not approved in the action, may significantly lower the amount of the accused's pay that is eligible for waiver. Also, a spouse who is also a military dependent can receive only waived forfeiture of pay, not pay and allowances. Finally, remember there will not be any forfeitures to waive if the accused goes beyond his or her ETS.

**6. Dependency Determinations under Article 58b:** When addressing waivers of mandatory forfeitures under Article 58b, UCMJ, an issue may arise as to whether a person qualifies as a dependent.

a. RCM 1101(d)(3) provides, for the purpose of waiving forfeitures, a dependent means any person qualifying as a dependent under 37 U.S.C. §401. This statute identifies four categories of dependents. The first category is the spouse of the member. The second category is an unmarried child of the member under 21 years of age, including an adopted or stepchild. In addition, special rules permit a child under 23 years of age to be a dependent if enrolled as a full-time student and a child over 21 years of age to be a dependent if incapable of self-support due to mental or physical incapacity. However, in both of these cases, the member must provide more than one-half of the child's support. The third category is the parent of the member, provided additional dependency requirements are met, including the member providing over one-half of

the parent's support. Parents includes natural parents, stepparents, and adoptive parents of the member or the member's spouse; and any other person who stood *in loco parentis* to the member for a continuous 5 year period before the member became 21 years of age. The final category is an unmarried person placed in legal custody of the member as a result of a court order for a period of at least 12 months. This category of persons, known as wards, must depend on the member for over one-half of their support and must meet numerous other criteria set forth in the statute.

b. Sufficient evidence of dependency is required to support an Article 58b waiver and the nature of this evidence will depend on the status of the dependent. For example, dependency status for a spouse and/or child may be established by their enrollment in DEERS or by other competent evidence, such as a marriage certificate for a spouse or a birth certificate or court order establishing paternity and/or child support obligations for a child. Dependency determinations for a child over 21 years of age, parents, or a ward are more complex since they can only be a dependent if the military sponsor provides more than one-half of their support. Since this involves a thorough determination by DFAS, any order waiving required forfeitures for the benefit of one of these dependents should require an "approval letter" of dependency from DFAS. The accused, or other party requesting the waiver, should provide a copy of the DFAS "approval letter" with any request to waive mandatory forfeitures. If an accused has failed to qualify or was unable to qualify the person as a dependent with DFAS, there will normally be insufficient evidence of dependency to support an Article 58b waiver of mandatory forfeitures.

**7. Service of Legal Reviews on the Accused:** The AFCCA has addressed whether an SJA's legal advice to a convening authority regarding requests for deferral or waiver of forfeitures must be served upon the accused with an opportunity to respond. The answer depends on whether the request is for deferral or waiver of forfeitures. In either case, legal offices should process requests promptly.

a. Article 57(a) deferral of forfeiture requests. In *United States v. Key*, 55 M.J. 537 (A.F. Ct. Crim. App. 2001), the Court held that an SJA review of a request for deferral of forfeitures does not need to be served on the defense for comment prior to submission to the convening authority. The Court compared such a request to a request for deferral of a sentence to confinement, for which no SJA recommendation is required and, historically, the SJA review of the request is not served on the accused. CAAF granted review of *Key* on 2 Oct 01 and heard oral arguments on 6 Feb 02.

b. Article 58b waiver of forfeiture requests. In *United States v. Spears*, 48 M.J. 768 (A.F. Ct. Crim. App. 1998), the Court considered whether a legal review of a request for a waiver of forfeitures must be served on the defense prior to submission to the convening authority. The Court noted that SJAs are not required to prepare legal reviews for requests for waiver of automatic forfeitures. To begin its analysis, the Court chose to treat the request for waiver of forfeitures as a clemency request. The Court then cautioned that care must be exercised when the request for waiver of forfeitures is addressed before the record is completed. If the review contains anything that is not included in the accused's request, it will be clearly outside the record because no record exists. *Spears* set this basic approach: any legal review prepared by the SJA for the convening authority prior to completion of the SJAR should be attached to the SJAR and should become part of the completed record of trial, and any legal review that may be

prepared after the SJAR should be treated as an addendum to the SJAR and served on the accused for comment. The lesson from *Spears* is, as a general rule, if the legal review contains new matter, serve it on the accused before submission to the convening authority and include it in the completed record of trial.

**8. Application of Article 57(a) and 58b to cases with offenses committed prior to 1 April 1996:** For cases in which all of the offenses occurred before 1 April 1996, U.S. Court of Appeals for the Armed Forces, in *United States v. Gorski*, 47 M.J. 370 (1997), held these provisions operate in violation of the *ex post facto* clause of the Constitution with respect to any individual tried for offenses committed before 1 April 1996, the effective date of Articles 57(a) and 58b. This issue will rarely be encountered because Article 43 provides a five-year statute of limitations for most offenses. However, for cases that are affected by the *Gorski* decision, any forfeitures collected pursuant to Article 58b (mandatory forfeitures); Article 57(a)(1)(A) (adjudged forfeitures taken prior to convening authority action); and/or any pay and allowances withheld due to a reduction in grade pursuant to Article 57(a)(1)(A) (reduction in grade prior to convening authority action), are without legal effect and will be restored. As for straddle cases (those involving offense(s) committed both before and after 1 April 1996), the Court, in *United States v. Carter*, 49 M.J. 392 (1998), applied unitary sentencing principles and held the decision in *Gorski* did not apply to those cases where the maximum sentence for any or all offenses committed on or after 1 April 1996 would have activated the mandatory forfeitures required under Article 58b.

9. In conclusion, we hope this paper clarifies this complex area of the law. If you have any questions concerning this matter, please contact the Policy and Precedent Branch or Appellate Records Branch, AFLSA/JAJM, at DSN 297-1539.

## Attachment 1

ARTICLE 57(a) and 58b, UCMJ

| FORFEITURE PERIOD  | ADJUDGED FORFEITURES (AF)   | MANDATORY FORFEITURES (MF) <i>(See Note 1)</i>   |
|--|---|--|
| DATE SENTENCE ADJUDGED TO 14 DAYS AFTER SENTENCE ADJUDGED          | Not in effect. Accused continues to be paid unless post ETS   | Not in effect. Accused continues to be paid unless post ETS  |
| 14 DAYS AFTER THE DATE ON WHICH THE SENTENCE IS ADJUDGED TO ACTION | In effect, except for any portion the CA defers. <i>(See Note 2)</i>  | In effect, except for any portion the CA defers <i>(See Note 2)</i> , and/or waives and directs payment to the accused's qualifying dependents. <i>(See Notes 3 &amp; 4)</i> |
| ACTION TO END OF FORFEITURE PERIOD                                 | The amount the CA approves is still in effect. The CA may approve, disapprove, commute or suspend the AF in whole or in part. | Still in effect, except any portion the CA waives or has waived. <i>(See Notes 4 &amp; 5)</i>  |

**Note 1:** Mandatory forfeitures (MF) only apply when three conditions exist: (1) the accused's sentence includes confinement for more than 6 months or death; or confinement and a punitive discharge; (2) the accused is in confinement or on parole; and (3) the accused is otherwise entitled to pay and allowances that are subject to MF. For example, the accused is not entitled to pay and allowances after ETS. Also, the amount subject to MF is reduced by the amount of AF. In the case of a general court-martial, MF apply to all pay and allowances due that member during the period of confinement and parole; and in the case of a special court-martial, two-thirds of all pay during such period.

**Note 2:** If the accused applies for deferment, the CA may defer all or a portion of the AF and/or MF 14 days after the date on which the sentence was adjudged until the convening authority takes action. The accused should specify whether the deferment requested is for AF, MF, or both (a request for deferment of forfeitures in general is considered a request for both). If a deferment is approved, the accused will be paid a sum equal to the pay and allowances to which entitled, minus any amounts forfeited (AF and/or MF not deferred). The CA may rescind a deferment (AF and/or MF) at any time.

**Note 3:** The CA may waive available MF with or without a request from the accused. The CA may waive MF to the extent that the accused is entitled to pay and allowances (see note 1 above). As an example, if the accused has total forfeitures and does not request deferment, there is no pay subject to MF that can be waived until action. See *US v. Emminizer*, 56 M.J. 441 (2002).

**Note 4:** MF may be waived until the earlier of: 1) a period not to exceed 6 months; 2) the accused's release from confinement; or 3) the last day the accused is otherwise entitled to pay and allowances (see note 1 above).

**Note 5:** At action, the CA may waive all or portion of the MF (if previously waived, waiver is memorialized in the action) for the benefit of the dependents. If the adjudged sentence includes forfeitures, the amount of MF that may be waived is the difference between the amount of AF and the amount subject to MF. The CA may disapprove, commute or suspend all or a portion of the AF to increase the amount of MF available for the CA to waive. The CA may retroactively waive MF, starting 14 days after the date on which the sentence was adjudged.



## Attachment 2

**Interplay between Adjudged Forfeitures and Mandatory Forfeitures:** The following is a step-by-step description of how adjudged and mandatory forfeitures take effect.

1. For fourteen days after sentence is announced, an accused will continue to receive any pay and allowances to which he or she is otherwise entitled. After fourteen days, if the sentence includes adjudged forfeitures, the accused will forfeit the adjudged amount. Only if the accused is entitled to receive any pay and allowances after the adjudged forfeitures have come into effect will mandatory forfeitures take effect, if applicable. The adjudged forfeitures will continue until the prescribed time period has ended. Mandatory forfeitures will continue until the earlier of 1) the accused's release from confinement (without parole), 2) the end of the accused's entitlement to pay and allowances, or 3) the sentence no longer requires mandatory forfeitures (i.e., the convening authority approves a sentence which does not trigger mandatory forfeitures).

2. In the examples that follow, assume the accused is entitled to receive \$1400 per month in pay and allowances. A general court-martial sentence includes a bad conduct discharge, 8 months confinement and forfeiture of \$500 per month for 3 months.

a. The accused is immediately entered into confinement and requests no deferrals. After fourteen days, the accused will forfeit \$500 per month based on the adjudged forfeitures (Article 57(a)). However, the accused will also forfeit the remaining \$900 per month to which he was otherwise entitled based on the mandatory forfeitures (Article 58b). After 3 months, when the time period for the adjudged forfeitures has expired, the accused will forfeit the entire \$1400 per month based on the mandatory forfeitures. The accused will continue to forfeit \$1400 per month until he is released from confinement and not placed on parole, which will probably be after a total of 6 months and 20 days (8 months minus 40 days for good time). The mandatory forfeitures will also end if the accused reaches his ETS while in confinement. If the convening authority ultimately approves a sentence that does not require mandatory forfeitures, e.g., 5 months confinement and no BCD, no more mandatory forfeitures will be taken. (The accused should be reimbursed for any mandatory forfeitures collected.)

b. While both adjudged and mandatory forfeitures may be deferred, only mandatory forfeitures may be waived. The accused may not have any pay or allowances subject to mandatory forfeiture (and therefore able to be waived) if all pay and allowances are already being forfeited as a result of adjudged forfeitures. As a result, if the convening authority wants to waive some amount of mandatory forfeitures and direct payment to the accused's dependents, a corresponding amount of adjudged forfeitures must not be in effect. The convening authority's options depend on the stage of the post-trial processing.

(1) After 14 days, the adjudged forfeiture of \$500 per month and the mandatory forfeiture of \$900 per month will take effect. At this point, the convening authority may waive only the mandatory forfeiture of \$900 per month.

(2) Before action, adjudged forfeitures may be deferred until action. To use the previous example, if the accused requests a deferral of the adjudged forfeitures of \$500 per month, and the convening authority grants the deferral, the adjudged forfeitures are no longer in effect. At the same time, mandatory forfeitures become effective and require a forfeiture of \$1400 per month

(the deferred \$500 per month of adjudged forfeitures and the \$900 per month already subject to mandatory forfeitures). Now, at least until action, the convening authority may waive \$1400 for the benefit of the accused's dependents for up to six months.

(3) Because deferrals end at action, in our example the convening authority somehow must do something to the adjudged forfeitures in order to continue to waive mandatory forfeitures. The convening authority may disapprove or suspend all or a portion of the adjudged forfeitures, making that amount subject to mandatory forfeitures and, therefore, available to be waived. Also, the convening authority may mitigate the adjudged forfeitures to another form of punishment, e.g., a reprimand, as long as the severity of the punishment is not increased. The convening authority may then waive any pay and allowances no longer subject to adjudged forfeitures. *NOTE:* The convening authority has these same options even if he or she does not defer mandatory forfeitures, but wants to waive them at action.

SAMPLE LANGUAGE TO INCLUDE IN CONVENING AUTHORITY'S INITIAL ACTION

**Disapproval of All Adjudged Forfeitures:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (unit), only so much of the sentence as provides for a bad conduct discharge, confinement for \_\_\_\_ ([month(s)] [year(s)]), and reduction to the grade of \_\_\_\_ is approved and, except for the bad conduct discharge, will be executed. *[Note: No reference to any adjudged forfeitures.]*

**Disapproval of a Portion of Adjudged Forfeitures:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (unit), only so much of the sentence as provides for a bad conduct discharge, confinement for \_\_\_\_ ([month(s)] [year(s)]), forfeiture of \$\_\_\_\_ pay per month for \_\_\_\_ ([month(s)] [year(s)]), and reduction to the grade of \_\_\_\_ is approved and, except for the bad conduct discharge, will be executed. *[Note: The approved forfeitures are less than the adjudged forfeitures in amount, length, or both.]*

**Mitigation of All Adjudged Forfeitures:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (unit), so much of the sentence extending to forfeiture of (total pay and allowances) ([two-thirds] [\$\_\_\_\_] pay per month for \_\_\_\_ [month(s)] [year(s)]) is changed to a reprimand. The sentence as changed to a bad conduct discharge, confinement for \_\_\_\_ ([month(s)] [year(s)]), reduction to the grade of \_\_\_\_, and a reprimand is approved and, except for the bad conduct discharge, will be executed. *[Note: The adjudged sentence did not include a reprimand. Also, the language of the reprimand must be included in the convening authority's action.]*

**Suspension of Entire Period of Adjudged Forfeitures:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (unit), the sentence is approved and, except for the bad conduct discharge will be executed, but the execution of that part of the sentence extending to forfeiture of (total pay and allowances) ([two-thirds] [\$\_\_\_\_] pay per month for \_\_\_\_ [month(s)] [year(s)]) is suspended for \_\_\_\_ ([month(s)] [year(s)]), at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action.

**Suspension of Six Months of Adjudged Forfeitures for Six Months:**

In the case of (RANK) (NAME) (SSN), United States Air Force, (unit), the sentence is approved and, except for the bad conduct discharge will be executed, but the execution of the first six months of that part of the sentence extending to forfeiture of (total pay and allowances) ([two-thirds] [\$\_\_\_\_] pay per month for \_\_\_\_ [month(s)] [year(s)]) is suspended for six months, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. The collection of the remaining \_\_\_\_ ([month(s)] [year(s)]) of forfeiture of (total pay and allowances) ([two-thirds] [\$\_\_\_\_] pay per month for \_\_\_\_ [month(s)] [year(s)]) will

begin at the end of the period of suspension, or sooner if the suspension is vacated. \*  
[Note: This language is based on the scenario contemplated in *Emminizer*. To our knowledge, it has not been tested at the appellate level.]

**Deferral of Adjudged and Mandatory Forfeitures:**

Pursuant to Articles 57, Section (a)(2), and 58b, Section (a)(1), Uniform Code of Military Justice, (all) (\$\_\_\_\_pay per month) of the adjudged forfeitures and (all) (\$\_\_\_\_pay per month) of the mandatory forfeitures were deferred ([14 days from the date sentence was adjudged] [from \_\_\_\_ - *insert other date prior to action*]) until ([the date of this action] [\_\_\_\_ - *specify an earlier date*]).

**Deferral of Adjudged Forfeitures Only:**

Pursuant to Article 57, Section (a)(2), Uniform Code of Military Justice, (all) (\$\_\_\_\_pay per month) of the adjudged forfeitures were deferred ([14 days from the date sentence was adjudged] [from \_\_\_\_ - *insert other date prior to action*]) until ([the date of this action] [\_\_\_\_ - *specify an earlier date*]).

**Deferral of Mandatory Forfeitures Only:**

Pursuant to Articles 57, Section (a)(2), and 58b, Section (a)(1), Uniform Code of Military Justice, (all) (\$\_\_\_\_pay per month) of the mandatory forfeitures were deferred ([14 days from the date sentence was adjudged] [from \_\_\_\_ - *insert other date prior to action*]) until ([the date of this action] [\_\_\_\_ - *specify an earlier date*]).

**Waived Forfeitures to Begin at Action or on an Earlier Date:**

Pursuant to Article 58b, Section (b), Uniform Code of Military Justice, (all) (\$\_\_\_\_pay per month) of the mandatory forfeitures are waived for a period of \_\_\_\_ months [Note: *no more than 6 months*] or release from confinement (*if applicable*: or expiration of term of service), whichever is sooner, with the waiver commencing on ([the date of this action] [\_\_\_\_ - *specify an earlier date if the waiver is retroactive*]). The (total pay and allowances) ([two-thirds] [\$\_\_\_\_] pay per month) is directed to be paid to ([\_\_\_\_\_, spouse of the accused, for the benefit of ([herself] [himself]) and the accused's \_\_\_\_ dependent children] [\_\_\_\_\_, legal guardian of \_\_\_\_\_, for the benefit of the accused's dependent, \_\_\_\_\_]).

**Waived Forfeitures Granted on an Earlier Date and Memorialized in the Action:**

Pursuant to Article 58b, Section (b), Uniform Code of Military Justice, (all) (\$\_\_\_\_pay per month) of the mandatory forfeitures were waived for a period of \_\_\_\_ months [Note: *no more than 6 months*] or release from confinement (*if applicable*: or expiration of term of service), whichever is sooner, ([from 14 days after sentence was adjudged] [from \_\_\_\_ - *insert other date prior to action*]). The (total pay and allowances) ([two-thirds] [\$\_\_\_\_] pay per month) was directed to be paid to ([\_\_\_\_\_, spouse of the accused, for the benefit of ([herself] [himself]) and the accused's \_\_\_\_ dependent children] [\_\_\_\_\_, legal guardian of \_\_\_\_\_, for the benefit of the accused's dependent, \_\_\_\_\_]).

**NOTE:** Be sure to include language designating confinement and language directing excess leave.

## SAMPLE CONVENING AUTHORITY ACTIONS

1. The adjudged sentence from a general court-martial is a bad conduct discharge, confinement for 10 months, total forfeitures, and reduction to E-1.

Upon the Accused's request, on 18 October 2002 (30 days after the sentence was adjudged) the convening authority approved a deferral of both adjudged and mandatory forfeitures until 30 October 2002.

The convening authority wants to disapprove all of the adjudged forfeitures in order to waive all mandatory forfeitures for the benefit of the accused's wife, to begin at action and last as long as possible. The Accused's ETS is 5 months after action.

In the case of AIRMAN FIRST CLASS PAUL A. BREADWINNER, 123-45-6789, United States Air Force, 2<sup>nd</sup> Airlift Squadron, only so much of the sentence as provides for a bad conduct discharge, confinement for 10 months and reduction to the grade of airman basic is approved and, except for the bad conduct discharge, will be executed. Pursuant to Articles 57, Section (a)(2), and 58b, Section (a)(1), Uniform Code of Military Justice, all of the adjudged forfeitures and all of the mandatory forfeitures were deferred from 18 October 2002 until 30 October 2002. Pursuant to Article 58b, Section (b), Uniform Code of Military Justice, all of the mandatory forfeitures are waived for a period of 6 months, or release from confinement, or expiration of term of service, whichever is sooner, with the waiver commencing on the date of this action. The total pay and allowances is directed to be paid to Fifi Breadwinner, spouse of the accused, for the benefit of herself. [Add confinement and excess leave language, as applicable.]

2. The adjudged sentence from a general court-martial is a bad conduct discharge, confinement for 8 months, forfeiture \$500 per month for 8 months, and reduction to E-1.

Upon the Accused's request, 14 days after the sentence was adjudged the convening authority approved deferral of mandatory forfeitures until action. The Accused's ETS is in 2 years.

The convening authority wants to suspend all the adjudged forfeitures. She also wants to waive \$500 per month of the resulting mandatory forfeitures for six months, to be paid to the guardian of the accused's son.

In the case of AIRMAN FIRST CLASS PAUL A. BREADWINNER, 123-45-6789, United States Air Force, 2<sup>nd</sup> Airlift Squadron, the sentence is approved and, except for the bad conduct discharge will be executed, but the execution of that part of the sentence extending to forfeiture of \$500 pay per month for 8 months is suspended for 6 months, at which time, unless the suspension is sooner vacated, the suspended part of the sentence will be remitted without further action. Pursuant to Articles 57, Section (a)(2), and 58b, Section (a)(1), Uniform Code of Military Justice, \$500 pay per month of the mandatory forfeitures were deferred 14 days from the date sentence was adjudged until the date of this action. Pursuant to Article 58b, Section (b), Uniform Code of Military Justice, \$500 pay per month of the mandatory forfeitures

are waived for a period of 6 months or release from confinement, whichever is sooner, with the waiver commencing on the date of this action. The \$500 pay per month is directed to be paid to Joseph Goodman, legal guardian of David Breadwinner, for the benefit of the accused's dependent, David Breadwinner. [Add confinement and excess leave language, as applicable.]

3. The adjudged sentence from a special court-martial is a bad conduct discharge, confinement for 3 months, hard labor without confinement for 3 months, forfeiture two-thirds pay per month for 3 months, and reduction to E-1. The Accused's ETS is in 3 years.

Upon the Accused's request, 14 days after the sentence was adjudged the convening authority approved deferral of all adjudged forfeitures until action and waiver of all mandatory forfeitures for six months or until release from confinement, whichever is sooner. The mandatory forfeitures are directed to be paid to the accused's wife and children.

The convening authority doesn't want to disapprove all the adjudged forfeitures, but wants to mitigate it to a lesser form of punishment—a reprimand.

In the case of AIRMAN FIRST CLASS PAUL A. BREADWINNER, 123-45-6789, United States Air Force, 2<sup>nd</sup> Airlift Squadron, so much of the sentence extending to forfeiture of two-thirds pay per month for 3 months is changed to a reprimand. The sentence as changed to a bad conduct discharge, confinement for 3 months, hard labor without confinement for 3 months, reduction to the grade of airman basic, and a reprimand is approved and, except for the bad conduct discharge, will be executed. Pursuant to Article 57, Section (a)(2), Uniform Code of Military Justice, all of the adjudged forfeitures were deferred 14 days from the date sentence was adjudged until the date of this action. Pursuant to Article 58b, Section (b), Uniform Code of Military Justice, all of the mandatory forfeitures were waived for a period of 6 months or release from confinement, whichever is sooner, from 14 days after sentence was adjudged. The two-thirds pay per month was directed to be paid to Fifi Breadwinner, spouse of the accused, for the benefit of herself and the accused's two dependent children. [Add confinement and excess leave language, as applicable.]

You are hereby reprimanded. I expect your future conduct will be a model of integrity and decorum. Nothing less will be tolerated.